

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

Western Communications Paging, LLC  
Paging Station KNKK501  
San Antonio, Texas

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File No. 98-DV-102

NAL/Acct. No. 915DV0004

**FORFEITURE ORDER****Adopted:** March 15, 2000**Released:** March 16, 2000

By the Chief, Enforcement Bureau:

1. In this order, we issue a monetary forfeiture in the amount of \$6,000 against Western Communications Paging LLC ("Western") for willful and repeated violation of Section 22.565 of the Commission's Rules ("Rules").<sup>1</sup> The noted violation involves radio operation with excessive power.

2. On July 28, 1999, the Commission's Denver, Colorado, Field Office issued a Notice of Apparent Liability ("NAL") for Forfeiture in the amount of \$6,000 to Western for the noted violation.<sup>2</sup> Western filed a response on August 19, 1999, to the NAL requesting cancellation or reduction of the forfeiture. For the reasons discussed below, we affirm the \$6,000 forfeiture amount.

**BACKGROUND**

3. FCC agents ("Agents") from the Denver Field Office monitored transmissions from Western's station, KNKK501, on April 23, 1998, and inspected that station's Cheyenne Mountain transmission site on April 30, 1998. Station KNKK501 is licensed to operate with 19 watts effective radiated power ("ERP"). The measurements taken on April 30, 1998, indicated that the transmitter output power of Station KNKK501 was 198 watts. On the basis of these measurements, the Agents calculated that the ERP was, conservatively, between 2 and 5 times higher than the authorized level.

4. On July 28, 1998, the Agents again monitored transmissions from Paging Station KNKK501 and inspected that station's Cheyenne Mountain transmission site. The Agents' measurements determined that the transmitter output power of Station KNKK501 was 156 watts. On the basis of these measurements, the Agents calculated that the ERP was, conservatively, between 2 and 4 times higher than the authorized level.

5. On July 29, 1998, an Agent met with a representative of Western and informed him about

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<sup>1</sup> 47 C.F.R. § 22.565

<sup>2</sup> *Notice of Apparent Liability*, NAL Acct. No. 915DV0004 (Released July 28, 1999).

the results of the inspections. In a letter dated August 4, 1998, to the Denver Field Office, Western acknowledged that it was operating Station KNKK501 with excessive power. Western asserted that the power of Station KNKK501 was already excessive when Western's current ownership acquired Western; and that, when it attempted to reduce power, it received numerous complaints from customers indicating that coverage was sporadic.

6. On July 28, 1999, the District Director, Denver Field Office issued the subject NAL to Western for operating with excessive power in apparent violation of Section 22.565 of the Rules. On August 19, 1999, the FCC received Western's response to the NAL. In that response, Western states that its current ownership "inherited" excessive power levels when it acquired Western on October 1, 1996, through a foreclosure; and that reducing power resulted in "poor penetration" and "numerous customer complaints." In addition, Western's response indicates that it has now reduced power to the authorized level. Finally, Western contends that the proposed monetary forfeiture is "excessive" and provides copies of Western's 1996, 1997 and 1998 federal income tax returns as well as "cash flow statements" from March, April, May, and June 1999.

### DISCUSSION

7. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, (rel. Dec. 28, 1999) ("*Policy Statement*"). In examining Western's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

8. Section 22.565 of the Rules prohibits operation with excessive power. In the instant case, Western admits operation with excessive power, asserting that it tried to reduce power but received numerous customer complaints. Accordingly, Western knew that it was operating Station KNKK501 with excessive power in violation of the Commission's Rules. Western's violation, therefore, was not merely willful; it was intentional.<sup>5</sup>

9. Western's violation is not mitigated by its having "inherited" excessive power levels from the previous ownership. Western knew of the excessive power operation but was still operating Station KNKK501 with excessive power on July 28, 1998, nearly two years after the acquisition. Furthermore, the fact that Western eventually took corrective action does not negate or mitigate its violation. *See generally KGVL, Inc.*, 42 FCC 2d 258, 259 (1973) (subsequent corrective action will not excuse past violations).

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> The word "willfully" as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that a licensee knew it was doing the act in question. *See Southern California Broadcasting Co.*, 6 FCC Rcd. 4387 (1991).

10. Although the Western response does not explicitly seek rescission or reduction of the proposed forfeiture on the basis of inability to pay, Western's submission of its 1996, 1997 and 1998 tax returns and four "cash flow statements" from 1999 was apparently intended to demonstrate its inability to pay the proposed forfeiture. Although other factors can be considered, the best indication of a company's ability to pay a forfeiture amount is its gross revenues. *See generally, PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Western's tax returns indicate that it had gross revenues of \$150,586 in 1996; \$608,790 in 1997; and \$456,901 in 1998. The proposed forfeiture amount of \$6,000 is not excessive in the context of these revenues. The cash flow statements do not demonstrate Western's inability to pay. We conclude Western has not demonstrated its inability to pay a forfeiture of \$6,000.

11. We have examined Western's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that Western has failed to provide a sufficient justification for canceling or reducing the forfeiture amount. Therefore, we affirm the forfeiture amount of \$6,000.

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, Sections 0.111, 0.311 and 1.80 of the Rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, and the Commission's *Policy Statement*, Western Communications Paging, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,000 for the willful violation of Section 22.565 of the Rules, which prohibits operation excessive power.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>6</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 915OR0003. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

14. **IT IS FURTHER ORDERED** that a copy of this order shall be sent by certified mail, return receipt requested, to Western Communications Paging, LLC, 8151 Broadway, San Antonio, Texas 78209.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>6</sup> 47 U.S.C. § 504(a).